

2013 MAY 29 PM 11:14

May 28, 2013

Mr. Anthony Herman, General Counsel,  
Office of General Counsel  
Jeff S. Jordan, Supervisory Attorney,  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

OFFICE OF  
COUNSEL2013 MAY 29 PM 5:23  
FEDERAL ELECTION COMMISSION

**Re: MUR #6734, Complaint of CREW and Campaign Legal Center**

Dear Mr. Herman and Mr. Jordan:

Pursuant to the attached Designation of Counsel, I represent Mr. David Wallace, a named respondent in the above referenced Matter Under Review (MUR). On behalf of Mr. Wallace, Counsel respond as follows:

At the outset, the Commission should be aware of the serious due process concerns evidenced by this MUR. 2 U.S.C. §437g(a)(1) expressly provides that the Commission shall notify subjects of complaints such as this MUR within 5 days of receipt of the underlying complaint. The Commission, however, has promulgated a regulation that excludes weekends from the computation of time, at 11 C.F.R. §111.2(b), for certain matters. Congress, of course, was aware of the existence of weekends when drafting the FECA, and that from any particular day that the Office of General Counsel might receive a complaint (a weekday), a period of 5 days hence would by necessity touch upon a weekend. Yet, Congress did not provide for the exclusion of weekends from the tolling of time. In fact, Congress specified "business days" where it intended to do so, for example at 2 U.S.C. §437(g)(b). The notice requirement facially raises obvious due process protection for respondents, not a mere administrative clock for the Commission's benefit. It is incongruous that the Commission, which does not excuse the filing of any report simply because the due date falls on a weekend, including 24- and 48-hour reports of Independent Expenditures and 48-hour reports of contributions, would by regulation deprive individuals of due process protections for its own administrative convenience in direct contravention of statute.

In the instant matter, the complaint was received by the Office of General Counsel at 12:32 PM, May 8, 2012. Five days hence is May 13, 2012. The notice sent to respondent is stamped by the Commission as May 14, 2012 (the 6<sup>th</sup> day hence). This substantively deprives my client of statutory due process protections not subject to regulatory over-ruling by the Commission.

The foregoing notwithstanding, the Commission should stay any action on the MUR until the resolution of *Shaun McCutcheon, et. al. v Federal Election Committee* (No. 12-536) currently pending before the Supreme Court. This case is a direct facial challenge to 2 U.S.C. §441a(a)(3)(B), at issue here. The reasonable use of government power and burden on judicial resources should counsel the Commission against premature action in this matter, which would impose substantial burdens on respondents for the exercise of free speech and association.

Lastly, my client was, within the meaning of 2 U.S.C. §437g(d), wholly unaware of the existence of the biennial limit on contributions by an individual to all federal candidates until receiving this MUR. Now that he is aware of this regulation, we are notifying the recipients, and seeking refunds, of any contributions made in excess of the biennial limits (based on date made).

Consequently, my client requests the Commission exercise its prosecutorial discretion to not pursue the matter, or in the alternate to stay any action on this MUR pending a ruling by the Supreme Court on the constitutionality of the subject provision.

Sincerely,



Dan Backer, Esq.

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FEDERAL ELECTION COMMISSION  
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STATEMENT OF DESIGNATION OF COUNSEL  
Please use one form for each Respondent/Entity/Treasurer.  
FAX (202) 719-3923

MUR # 6734

NAME OF COUNSEL: Dan Backer, Esq.  
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The above-named individual and/or firm is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

5/26/2013  
Date

David L. Wallace  
Respondent/Agent -Signature

Title (Treasurer/Candidate/Owner)

NAMED RESPONDENT: DAVID L. WALLACE

MAILING ADDRESS:  
(Please Print)

West Frankfort, IL 62896

TELEPHONE- HOME ( )

BUSINESS ( )

Information is being sought as part of an investigation being conducted by the Federal Election Commission and the confidentiality provisions of 2 U.S.C. § 4370(a)(12)(A) apply. This section prohibits making public any investigation conducted by the Federal Election Commission without the express written consent of the person under investigation

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